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# Westmoreland's lawyers denied use of CBS report

From Chicago Tribune wires

**NEW YORK**—Lawyers for retired Gen. William C. Westmoreland cannot use most of an internal CBS report as evidence that the network libeled America's former Vietnam commander, a federal judge ruled Thursday.

U.S. District Judge Pierre N. Leval ruled that much of the report by CBS News executive Burton Benjamin is not relevant to the issues in Westmoreland's 10-week-old \$120 million libel trial against CBS and three of its employees.

But Leval said the report contains some information that can be used in the trial.

Westmoreland says he was defamed by the 1982 documentary "The Uncounted Enemy: A Vietnam Deception," which charged that he suppressed information about rising enemy troop strength in 1967 to make it appear that

American forces were winning the war.

The Benjamin report found several violations of CBS News guidelines in the program, but the network continues to maintain the broadcast was accurate.

**AMONG THE PRACTICES** Benjamin criticized were producer George Crile's decision to interview one favorable source twice; his allowing the same source, ex-CIA analyst George Allen, to view excerpts from interviews with other people; the omission of comments from officials who challenged the program's thesis; and the failure to identify ex-CIA agent Samuel Adams as a paid CBS consultant when he appeared on the program.

Leval noted that as a public figure seeking to prove libel, Westmoreland must demonstrate not only that the broadcast was false but also that CBS recklessly disre-

garded whether it was true or false.

"The fairness of the broadcast is not at issue in the libel suit," the judge wrote in his 10-page decision. "Publishers and reporters do not commit a libel in a public figure case by publishing unfair one-sided attacks. . . . A publisher who honestly believes in the truth of his accusations . . . is under no obligation under the libel law to treat the subject of his accusations fairly or evenhandedly."

"**IF IT IS** the case that various internal rules of CBS were broken in the making of the documentary, that fact has no bearing on whether the documentary was made in reckless or intentional disregard of the truth," Leval wrote.

Much of the information in the report that is relevant to the trial is already in evidence or undisputed,

Crile returned to the witness

stand for a fifth day Thursday.

He clashed repeatedly on Wednesday with Westmoreland's attorney, Dan M. Burt, as the lawyer read jurors interview segments left out of the broadcast and charged that Crile used only those statements that supported the program's thesis.

During questioning, Burt charged that a section of Westmoreland's interview was deliberately cut to distort the general's response to a question by CBS correspondent Mike Wallace, a codefendant in the case.

Wallace had asked Westmoreland whether Johnson was "a difficult man to feed bad news about the war?"

**IN THE UNEDITED** version of the interview, Westmoreland said: "Well, Mike, you know as well as I do that people in senior positions

love good news, and they don't like bad news, and after all, it's well-recognized that supreme politicians or leaders in countries are inclined to—to shoot the messenger that brings bad news.

"Certainly he wanted bad news like a hole in the head. He welcomed good news. But he, he was given both the good and the bad, but he was inclined to accentuate the positive."

In the broadcast version, Westmoreland's words were edited to: "Well, Mike, you know as well as I do that people in senior positions love good news. Politicians or leaders in countries are inclined to—to shoot the messenger that brings bad news. Certainly he wanted bad news like a hole in the head."

At the trial, Crile said, "We included the part that was relevant."